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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

No. CR S-02-0433-FCD-CMK
CIV S-04-2582-FCD-CMK

12 Respondent,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 JEFFREY HOLDEN CHILCOTT,

15 Movant.
16 _____/

17 Movant, a federal prisoner proceeding pro se, brings this motion to correct or set
18 aside a criminal judgment pursuant to 28 U.S.C. § 2255. Pending before the court is
19 respondent's motion to dismiss. Movant has not filed any opposition.

20 In its motion to dismiss, respondent argues that movant has waived any collateral
21 attack under 28 U.S.C. § 2255 pursuant to a written plea agreement. Respondent concludes,
22 therefore, that the motion should be dismissed. The court agrees. The written plea agreement
23 provides, in pertinent part, as follows: "The defendant also gives up any right he may have to
24 bring a post-conviction attack on his conviction or his sentence. He specifically agrees not to
25 file a motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or sentence." A review
26 of the transcript of movant's change of plea hearing reflects that this waiver was knowing and

1 voluntary. As such, it is enforceable. See United States v. Abarca, 985 F.2d 1012, 1014 (9th
2 Cir. 1993).

3 Based on the foregoing, the undersigned recommends that:

- 4 1. Respondent's motion to dismiss be granted;
- 5 2. Movant's motion pursuant to 28 U.S.C. § 2255 be dismissed; and
- 6 2. The Clerk of the Court be directed to close companion civil case no. CIV
7 S-04-2582-FCD-CMK.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
10 after being served with these findings and recommendations, any party may file written objections
11 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
12 and Recommendations." Failure to file objections within the specified time may waive the right
13 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 DATED: December 5, 2005.

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18 **CRAIG M. KELLISON**
19 UNITED STATES MAGISTRATE JUDGE
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